

REMARKS

Amendments to claim 1 are for the purpose of clarifying what Applicant regards as the invention. No new matter has been added.

I. **Claim Rejections under 35 U.S.C. § 103**

Claim 1 stands rejected under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 7,202,296 (Niederdrank).

Claim 1 recites that the environment classifier is for *categorizing the sound environment based at least in part on the determined characteristic parameters* (Emphasis Added).

According to page 3 of the Office Action, the analysis unit 14 of Niederdrank is considered as the claimed “environment classifier.” As an initial matter, Applicant respectfully notes that the analysis unit 14 of Niederdrank is for determining characteristic parameters of an acoustic field (c4:35-42), not environment classification. Thus, the analysis unit 14 of Niederdrank cannot be considered to be the claimed “environment classifier” that categorizes sound environment. This is further supported by the disclosure of Niederdrank, which specifically describes that a hearing situation (environment classification) is not the same as an acoustic field characteristic (c2:15-17). Thus, the analysis unit 14 of Niederdrank clearly does not, and cannot, categorize sound environment within the context of the reference, and therefore, cannot be considered to be the claimed “environment classifier.”

In addition, Applicant respectfully disagrees with the Office Action’s characterization of column 6, lines 4-8 of Niederdrank as allegedly disclosing that the analysis unit 14 can determine a hearing situation. This cited passage actually states that components 14, 21, and components 17, 24 can include neural structures and fuzzy logic for optimized determination of acoustic field characteristics and a hearing situation. Since components 14, 21 have been described in Niederdrank as being used to determine acoustic field characteristics (as discussed above), and components 17, 24 have been described in Niederdrank as being used to determine a hearing situation (c5:58-67), the passage at c6:4-8 clearly means that components 14, 21 can include fuzzy logic for optimized determination of *acoustic field characteristics*, while components 17,

24 can include fuzzy logic for optimized determination of a hearing situation. Thus, the analysis unit 14 clearly cannot determine a hearing situation.

Also, claim 1 has been amended to recite that each of the parameter maps of the first and second hearing aid is configured to *receive a first output from the environment classifier of the first hearing aid and a second output from the environment classifier of the second hearing aid*, and generate the output for the selection of the signal processing algorithm (Emphasis Added). As discussed, the analysis unit 14 of Niederdrank cannot be considered the environment classifier in claim 1. Thus, Niederdrank fails to disclose a parameter maps that receives inputs from the claimed “environment classifiers” in claim 1. Also, according to Niederdrank, it is the acoustic field characteristics (i.e., not an output from an “environment classifier” that categorizes sound environment) that are being transmitted from the analysis unit 14 to another hearing instrument (c4:52-54). Thus, Niederdrank clearly does not disclose or suggest a parameter map that receives a first output from an environment classifier of a first hearing aid, and a second output from an environment classifier of a second hearing aid, as described in claim 1.

For at least the foregoing reasons, claim 1 and its dependent claims are believed allowable over Niederdrank.

Further, to the extent that the Examiner is inclined to maintain the same, or issue another, § 103 rejection based on a modification of, or a combination with, Niederdrank, Applicant respectfully submits that this would be improper. This is because as discussed, Niederdrank specifically specifies that the output from the analysis unit 14 is an acoustic field characteristic that is different from a hearing situation (c2:15-17). Therefore, should it be maintained that the analysis unit 14 be analogized as the claimed “environment classifier,” Niederdrank clearly teaches away from the claimed subject matter (requiring the environment classifier to categorize an environment. Since a *prima facie* case of a § 103 rejection cannot be established if the cited reference teaches away from a claimed feature, Applicant respectfully requests that the § 103 rejection based on Niederdrank be withdrawn, and that any further § 103 rejection based on Niederdrank be avoided.

II. New claims 18-28

New claim 18 and its dependent claims are allowable over the cited reference of record for at least the reason that the cited reference does not disclose or suggest the subject matter described in these claims.

CONCLUSION

Based on the foregoing, it is believed that all claims are allowable and a Notice of Allowance is respectfully requested. If the Examiner has any questions or comments regarding this amendment, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **GNR P507 PCT US**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **GNR P507 PCT US**.

Respectfully submitted,

DATE: June 18, 2009

By: /Gerald Chan/
Gerald Chan
Registration No. 51,541

VISTA IP LAW GROUP, LLP
1885 Lundy Ave., Suite 108
San Jose, California 95131
Telephone: (408) 321-8663 (Ext. 203)
Facsimile: (408) 877-1662